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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE

DENO MILANO,)	
)	
)	
PLAINTIFF,)	NO. C-10-2125 CW
)	
VS.)	THURSDAY, JUNE 28, 2012
)	
INTERSTATE BATTERY SYSTEM)	OAKLAND, CALIFORNIA
OF AMERICA, INC., ET AL.,)	
)	
DEFENDANTS.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF: GIRARD GIBBS
601 CALIFORNIA STREET, 14TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108
BY: ERIC H. GIBBS, ESQUIRE
AMY M. ZEMAN, ESQUIRE

FOR DEFENDANTS: JONES DAY
2727 NORTH HARWOOD STREET
DALLAS, TEXAS 75201
BY: JEROME R. DOAK, ESQUIRE

JONES DAY
555 CALIFORNIA STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104
BY: CRAIG E. STEWART, ESQUIRE

REPORTED BY: DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

1 THURSDAY, JUNE 28, 2012

2:12 P.M.

2 P R O C E E D I N G S

3 **THE CLERK:** CALLING C-10-2125 MILANO VERSUS
4 INTERSTATE BATTERY SYSTEMS OF AMERICA, INC. ET AL.

5 PLEASE STEP FORWARD AND STATE YOUR APPEARANCES FOR
6 THE RECORD, PLEASE.

7 **MR. GIBBS:** GOOD AFTERNOON, YOUR HONOR. ERIC GIBBS
8 FOR PLAINTIFF DENO MILANO.

9 **MR. DOAK:** GOOD AFTERNOON. JERRY DOAK AND CRAIG
10 STEWART FOR DEFENDANT INTERSTATE BATTERIES.

11 **MS. ZEMAN:** GOOD AFTERNOON, YOUR HONOR. AMY ZEMAN
12 FOR PLAINTIFF MILANO.

13 **THE COURT:** IS THERE ANYONE ELSE APPEARING ON THIS
14 CASE? ANY OBJECTORS, OPT-OUTS?

15 NO?

16 OKAY. SO THIS IS ON FOR FINAL APPROVAL OF A CLASS
17 ACTION SETTLEMENT.

18 AND I JUST HAVE A COUPLE OF ISSUES WITH RESPECT TO
19 THE OBJECTOR THAT BEGINS WITH A B.

20 **MR. GIBBS:** BARGINEAR.

21 **THE COURT:** BARGINEAR. I AM PLANNING ON STRIKING
22 HIS OBJECTION AS WELL AS DENYING IT ON THE MERITS, BUT ONE OF
23 THE GROUNDS FOR IT IS THAT YOU SAY THAT HE WAS TOLD TO FILE
24 CERTAIN DOCUMENTS BY A CERTAIN DATE AND DIDN'T DO SO, OR FILE
25 ANY PRIVILEGE LOGS, OR ANYTHING ELSE.

1 NO?

2 **MR. GIBBS:** PURSUANT TO THE STIPULATION AND ORDER,
3 HE WAS REQUIRED TO APPEAR FOR A DEPOSITION AND RESPOND TO
4 DOCUMENT REQUESTS. HE APPEARED FOR THE DEPOSITION, BUT DID NOT
5 RESPOND TO THE DOCUMENT REQUESTS AT ALL.

6 **THE COURT:** RIGHT. THAT IS WHAT I WAS REFERRING TO.
7 THAT'S FINE. BUT I THINK THE RECORD SHOULD HAVE
8 SOME ACTUAL EVIDENCE OF THAT RATHER THAN JUST YOUR ARGUMENT.

9 **MR. GIBBS:** OKAY.

10 **THE COURT:** SO IF YOU CAN --

11 **MR. GIBBS:** I CAN PUT IN A DECLARATION.

12 **THE COURT:** -- PUT IN A DECLARATION TO THAT EFFECT,
13 YES.

14 AND THEN I THINK THAT SHOULD BE ADDED TO THE
15 PROPOSED ORDER THAT HIS OBJECTION IS BOTH STRICKEN AND THAT
16 HE -- BECAUSE HE DIDN'T RESPOND TO DOCUMENTS, AND THAT IT WAS
17 DENIED ON THE MERITS FOR THE REASONS THAT YOU SET OUT.

18 ALSO, THE FACT THAT AT HIS DEPOSITION, HE
19 ESSENTIALLY REPUDIATED HIS OBJECTION. THAT COULD BE IN THE
20 ORDER, TOO.

21 **MR. GIBBS:** WE CAN EXPAND THE ORDER. I JUST WANTED
22 TO HEAR THE COURT'S REACTION BEFORE WE DID THAT.

23 **THE COURT:** OKAY.

24 **MR. GIBBS:** IS THAT -- WE SUBMITTED THE ORDER ON
25 FINAL APPROVAL AND FINAL JUDGMENT. THAT'S THE ORDER YOU WOULD

1 LIKE US TO EXPAND?

2 **THE COURT:** ACTUALLY, BOTH. I WAS GOING TO SAY YOU
3 SHOULD PUT IT IN THE ATTORNEY'S FEE ORDER AS WELL BECAUSE HE
4 DOES OBJECT TO ATTORNEY'S FEES.

5 **MR. GIBBS:** OKAY.

6 **THE COURT:** JUST SO EVERYTHING'S ALL IN ONE PLACE.

7 ON THE ATTORNEY'S FEES, THOUGH, I WOULD LIKE YOU TO
8 SPECIFY THE AMOUNT OF EXPENSES AND BREAK THAT OUT.

9 AND THEN THERE'S SOME CALCULATION ISSUES. THEY ARE
10 MINOR AND I CAN SEE WHAT HAPPENED, BUT I THINK IT WOULD BE
11 BETTER TO HAVE EVERYTHING ADD UP PROPERLY.

12 SO, IT'S THE -- YOUR DECLARATION. THERE'S A TABLE
13 ON PAGE 4 WHICH HAS ONE LODESTAR AMOUNT 998,215.75, AND THEN
14 ELSEWHERE IN THE MOTION THERE'S A DIFFERENT NUMBER, 989,880.75.
15 AND THAT ONE IS THE SAME AS THE TABLE IN PARAGRAPH 6 OF THE
16 DECLARATION. SO THERE'S -- I AM SURE THEY ARE JUST TYPOS,
17 BUT -- AND IT SEEMS TO BE RELATED TO THE NUMBERS FOR STEIN AND
18 ZEMAN AND THE LITIGATION ASSISTANTS, WHICH DON'T MATCH THE
19 NUMBERS IN THE TABLE. AND THAT SEEMS TO BE WHY THE TOTALS ARE
20 COMING OUT DIFFERENTLY.

21 **MR. GIBBS:** I REMOVED -- I WAS REVIEWING THIS TODAY.
22 I REMOVED ABOUT \$11,000 OF TIME BEFORE I SUBMITTED THIS, SO
23 THAT MAY HAVE BEEN PICKED UP IN ONE PLACE AND NOT ANOTHER.

24 **THE COURT:** MAYBE.

25 **MR. GIBBS:** I CAN FIX THAT.

1 AND WOULD THE COURT LIKE ME TO MAKE OUR TIME
2 CURRENT? BECAUSE THIS IS A COUPLE OF MONTHS' OLD. WE HAVE
3 ADDITIONAL TIME SINCE.

4 **THE COURT:** YES. AND, IN ADDITION, HAVE A
5 DECLARATION MAKING YOUR TIME CURRENT.

6 **MR. GIBBS:** YES.

7 **THE COURT:** AND THEN JUST ADD EVERYTHING UP AGAIN
8 AND MAKE SURE ALL OF THE NUMBERS MATCH EVERYWHERE.

9 **MR. GIBBS:** I APOLOGIZE FOR THAT.

10 **THE COURT:** AND THEN THERE'S ANOTHER ONE, TOO. IT'S
11 A TABLE ON PARAGRAPH 9. AND IN ONE PLACE IT SAYS "118.5
12 HOURS", AND IN ANOTHER PLACE IT SAYS "18.5 HOURS".

13 AND IF YOU USE 118, IT DOESN'T ADD UP RIGHT. IF YOU
14 USE 18, IT DOES ADD UP RIGHT. I THINK IT IS JUST A TYPO
15 PUTTING AN EXTRA DIGIT IN THERE. BUT, AGAIN, IF YOU COULD FIX
16 THAT.

17 AND THEN YOUR OTHER OBJECTOR, HIS OBJECTION IS
18 OVERRULED. AND THIS YOU KNEW BECAUSE HE HASN'T SHOWN HIMSELF
19 TO BE A CLASS MEMBER.

20 **MR. GIBBS:** OKAY.

21 **THE COURT:** BUT I THINK THAT'S IN THERE.

22 SO, I THINK THOSE ARE ALL THE ISSUES I HAVE. DO YOU
23 HAVE ANYTHING ELSE YOU WANTED TO ADD OR BRING UP?

24 **MR. GIBBS:** WE DO NOT.

25 **THE COURT:** ANYBODY ELSE?

1 **MR. GIBBS:** IN TERMS OF ADDRESSING MR. BARGINEAR,
2 SHOULD WE ESSENTIALLY PICK UP ON THE SUPPLEMENTAL REPLY THAT WE
3 FILED?

4 **THE COURT:** YES. IT DOESN'T HAVE TO BE LONG, BUT I
5 JUST THINK WE SHOULD HAVE EVERYTHING IN ONE PLACE.

6 **MR. GIBBS:** I AGREE.

7 **THE COURT:** I THINK THAT CAME IN AFTER THE PROPOSED
8 ORDER.

9 **MR. GIBBS:** WE TOOK THE DEPOSITION ON THIS MONDAY
10 AND SUPPLEMENTED IT ON TUESDAY.

11 **THE COURT:** SO I WOULD JUST LIKE TO HAVE BOTH OF THE
12 PROPOSED ORDERS UPDATED TO INCLUDE THAT AND TO FIX THE
13 CALCULATIONS.

14 AND YOU CAN SHOW THEM ALL TO COUNSEL BEFORE YOU
15 SUBMIT THEM, AND THEN SUBMIT THEM BOTH -- I GUESS FILE THEM AND
16 ALSO SUBMIT THEM TO THE PROPOSED ORDER E-MAIL BOX SO THAT IN
17 CASE I WANT TO MAKE ANY OTHER CHANGE TO IT, I WILL HAVE A WORD
18 PROCESS VERSION THAT I CAN MODIFY.

19 **MR. GIBBS:** OKAY. WE WILL DO THAT.

20 **THE COURT:** LET ME LOOK THROUGH MY NOTES AND MAKE
21 SURE THERE ISN'T ANYTHING ELSE THAT I WANTED TO BRING UP.

22 (PAUSE IN THE PROCEEDINGS.)

23 **THE COURT:** YOU ARE GOING TO FILE A DECLARATION
24 VERIFYING THAT HE DID NOT FILE THOSE PAPERS?

25 **MR. GIBBS:** CORRECT.

1 **THE COURT:** LIKE HE WAS SUPPOSED TO.

2 **MR. GIBBS:** IN OUR SUPPLEMENTAL REPLY, WE MENTION AN
3 APPELLATE BOND AND WE MENTION A SANCTION IN THE CONTEXT OF WHAT
4 WAS PROVIDED IN THE CLASS NOTICE FOR THE DISCOVERY COSTS FOR
5 FILING A FRIVOLOUS OBJECTION.

6 DOES THE COURT WANT ME TO INCLUDE THAT IN THE ORDER?

7 **THE COURT:** WELL, I THINK WE COULD WAIT AND SEE IF A
8 NOTICE OF APPEAL IS FILED.

9 **MR. GIBBS:** OKAY.

10 **THE COURT:** IF ONE ISN'T, THEN WE MIGHT JUST LEAVE
11 WELL ENOUGH ALONE.

12 **MR. GIBBS:** UNDERSTOOD.

13 **THE COURT:** IF ONE IS, THAT WOULD BE TIME ENOUGH TO
14 ASK FOR AN APPELLATE BOND AND TO RENEW -- I WILL TAKE YOUR
15 REQUEST FOR SANCTIONS UNDER SUBMISSION. IF NOTHING FURTHER
16 HAPPENS, I WOULD BE MORE INCLINED TO JUST DENY IT AND LET
17 THINGS ALONE.

18 **MR. GIBBS:** I THINK THAT'S A PRUDENT APPROACH.

19 **THE COURT:** BUT THERE WAS ONE OTHER THING.

20 I WOULD ALSO LIKE YOU TO ADD TO THE ATTORNEY'S FEE
21 ORDER, AND MAYBE TO BOTH, YOUR REPRESENTATION THAT ANOTHER
22 REASON JUSTIFYING YOUR ATTORNEY'S FEES ARE THAT YOU HAVE AGREED
23 TO DO FURTHER WORK ON THE CASE, AFTER THE FEES ARE ORDERED, TO
24 FOLLOW UP. YOU MENTIONED THAT YOU WERE MAKING THAT COMMITMENT.
25 AND IF YOU COULD PUT THAT IN THE ORDERS, I THINK THAT WOULD BE

1 HELPFUL.

2 MR. GIBBS: SURE.

3 THE COURT: OKAY. THEN OTHERWISE THEN I WILL GIVE
4 FINAL APPROVAL TO THE SETTLEMENT ONCE THOSE CHANGES HAVE BEEN
5 MADE.

6 MR. GIBBS: THANK YOU, YOUR HONOR.

7 MR. DOAK: THANK YOU.

8 THE COURT: THANK YOU.

9 (PROCEEDINGS CONCLUDED AT 2:17 P.M.)

10
11
12
13 **CERTIFICATE OF REPORTER**

14 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE UNITED
15 STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY
16 THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF
17 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

18
19 /S/ DIANE E. SKILLMAN

20 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

21
22 MONDAY, JULY 16, 2012